

ASSEMBLY BILL

No. 1715

Introduced by Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

(Coauthors: Senators Burton, Escutia, and Kuehl)

February 26, 2003

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as introduced, Committee on Judiciary. Employment arbitration agreements.

Existing law provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would invalidate predispute arbitration agreements between employers and employees that relate to employment practices covered by the Fair Employment and Housing Act (FEHA). It would further establish that on and after January 1, 2004, it is an unlawful employment practice to require an employee to waive rights or procedures under the FEHA, that a waiver of rights or procedures under the FEHA must be knowing, voluntary, and not made as a condition of employment or continued employment, and that a waiver of rights or procedures under the FEHA required as a condition of employment or continued employment prior to January 1, 2004, may be deemed involuntary as to any FEHA claim that arises on or after January 1, 2004. The bill also provides that an employer has the burden to prove that a waiver or

arbitration agreement was knowing, voluntary, and not a condition of employment or continued employment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that it is the
2 public policy of the State of California to ensure that employees
3 have the full benefit of the rights and protections contained in the
4 Fair Employment and Housing Act and that employees not be
5 deprived of those rights and protections by the use of coerced and
6 involuntary waivers. It is the purpose of this act to ensure that any
7 agreement between an employer and employee to arbitrate any
8 claim arising under the FEHA is a matter of consent and not
9 coercion.

10 The Legislature finds and declares that involuntary predispute
11 arbitration provisions that limit an employee's access to the
12 Department of Fair Employment and Housing as a condition of
13 employment and limit the authority of the department to
14 investigate and pursue meritorious claims of discrimination are
15 against the public policy of this state.

16 SEC. 2. Section 1281 of the Code of Civil Procedure is
17 amended to read:

18 1281. ~~A—~~*Except as provided in subdivision (b), a written*
19 *agreement to submit to arbitration an existing controversy or a*
20 *controversy thereafter arising is valid, enforceable, and*
21 *irrevocable, save upon such grounds as that exist for the revocation*
22 *of any contract.*

23 *(b) Subdivision (a) does not apply to any predispute arbitration*
24 *agreement between an employer and employee that violates*
25 *Section 12952 of the Government Code.*

26 SEC. 3. Section 12952 is added to the Government Code, to
27 read:

28 12952. (a) It is an unlawful employment practice, on or after
29 January 1, 2004, for an employer, as defined in subdivision (d) of
30 Section 12926, to require an employee or potential employee to
31 waive rights or procedures provided for in this chapter, including,
32 but not limited to, the right to file a complaint with the department
33 pursuant to Section 12960 or the right to file and pursue a civil

1 action pursuant to Section 12965, as a condition of employment or
2 continued employment.

3 (b) It is an unlawful employment practice, on or after January
4 1, 2004, for an employer, as defined in subdivision (d) of Section
5 12926, to refuse to hire, harass, discharge, expel, or otherwise
6 discriminate against an employee or potential employee because
7 he or she refuses to waive rights or procedures provided for in this
8 chapter.

9 (c) Any waiver of rights or procedures provided under the Fair
10 Employment and Housing Act must be knowing, voluntary, and
11 not made a condition of employment or continued employment.

12 (1) Any waiver of rights or procedures provided under the Fair
13 Employment and Housing Act, including an agreement to arbitrate
14 a FEHA claim, that is required as a condition of employment or
15 continued employment in violation of subdivision (a), shall be
16 deemed void, unconscionable, against public policy, and
17 unenforceable.

18 (2) Any waiver of rights or procedures provided under the Fair
19 Employment and Housing Act, including an agreement to arbitrate
20 a FEHA claim, required as a condition of employment or
21 continued employment in any contract entered into prior to
22 January 1, 2004, may be deemed involuntary as to any FEHA
23 claim that arises on or after January 1, 2004, and if so found, is
24 unconscionable, against public policy, and unenforceable.

25 (d) The employer has the burden of proving that any waiver
26 under subdivision (a), (b), or (c) was knowing, voluntary, and not
27 made a condition of employment or continued employment, or
28 that the arbitration agreement under subdivision (a), (b), or (c) was
29 knowing, voluntary, and not made a condition of employment or
30 continued employment.

